

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**

SAN DIEGO COMMUNITY COLLEGE
DISTRICT,

Employer,

and

SAN DIEGO ADULT EDUCATORS CHAPTER
OF LOCAL 4289, CFT, AFT, AFL-CIO,

and

AMERICAN FEDERATION OF TEACHERS
GUILD, LOCAL 1931, CFT, AFT, AFL-CIO,

Exclusive Representatives.

Case No. LA-UM-649-E

Request for Judicial Review
PERB Decision No. 1445-E

PERB Order No. JR-20-E

February 26, 2002

Appearances: Liebert Cassidy Whitmore by Bruce A. Barsook, Attorney, for San Diego Community College District; Gattey Cooney & Baranic by James M. Gattey, Attorney, for San Diego Adult Educators Chapter of Local 4289, CFT, AFT, AFL-CIO and American Federation of Teachers Guild, Local 1931, CFT, AFT, AFL-CIO.

Before Amador, Baker and Whitehead, Members.

DECISION

BAKER, Member: This case is before the Public Employment Relations Board (PERB or Board) on a request by the San Diego Community College District (District) that the Board join in a request for judicial review of San Diego Community College District (2001) PERB Decision No. 1445-E (San Diego). In San Diego, the Board granted a unit modification petition jointly filed by the San Diego Adult Educators Chapter of Local 4289, CFT, AFL-CIO (SDAE) and the American Federation of Teachers Guild, Local 1931, CFT/AFT (Guild) to move

continuing education counselors from the continuing education faculty bargaining unit represented by SDAE to the college faculty bargaining unit represented by the Guild.

After reviewing the District's request for judicial review, SDAE and the Guild's opposition to the request and the entire record in this matter, the Board declines to join in the request for judicial review based on the following discussion.

DISCUSSION

In ruling on judicial review requests, the Board's authority is derived from the Educational Employment Relations Act (EERA) section 3542(a)¹ which states, in pertinent part:

No employer or employee organization shall have the right to judicial review of a unit determination except: (1) when the board in response to a petition from an employer or employee organization, agrees that the case is one of special importance and joins in the request for such review.
(Emphasis added.)

Under PERB Regulation 32500(c),² the Board has the sole discretion to determine whether a case is "one of special importance." The regulation states, in pertinent part:

(c) The Board may join in a request for judicial review or may decline to join, at its discretion.

The Board's considerable discretion in the determination of appropriate units is demonstrated by the very limited circumstances under which judicial review of its unit decisions may be obtained. (San Diego Unified School District (1981) PERB Order No. JR-10.) The reason for PERB's strict standard is to ensure that the fundamental rights of employees to form,

¹ EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

² PERB regulations are codified at California Code of Regulations, title 8, section 31001, et seq.

join and participate in the activities of employee organizations is not abridged. Further, the standard is also employed to prevent employee organizations' rights from being inhibited because if unit determinations by PERB are subject to numerous legal challenges, delays of implementation of the Board's decisions could occur. (San Francisco Community College District (1995) PERB Order No. JR-16-E (San Francisco); State of California (Department of Personnel Administration) (1993) PERB Order No. JR-15.)

On few occasions, the Board has joined in a request for judicial review where it found "special importance" because: (1) it was a novel issue; (2) primarily involved construction of a statutory provision unique to EERA; and (3) was likely to arise frequently. (San Francisco; Los Angeles Unified School District (1985) PERB Order No. JR-13.)

The District requests that the Board join the District in seeking judicial review of the unit modification petition because the Board's decision raises issues of special importance with respect to: (1) the appropriate standard of review of the PERB agent's decision; (2) what evidence should be considered when deciding the issue of "dissatisfaction;" and (3) what evidence is necessary to establish detrimental impact on the efficiency of an employer's operations. In addition, the District requests the Board stay its decision in San Diego during the pendency of the requested judicial review.

SDAE and the Guild respond that the District's request for judicial review does not satisfy the requirement that the issues be of "special importance" and that the District seeks merely to relitigate the issues decided by the Board in San Diego in another forum. SDAE and the Guild argue that the District's sole intent in filing the request for judicial review is to delay the implementation of the Board's decision in San Diego.

The standard of review utilized by the Board in San Diego is not in question. The Board utilized a de novo review of the record and reached a different conclusion than the Board agent. The Board's decision in San Diego turned on an application of the facts to the unit determination criteria contained in EERA section 3545(a). As such, the request for unit modification decided in San Diego did not present a novel issue and did not primarily involve construction of a statutory provision unique to EERA. The District's request for judicial review merely seeks to relitigate the issues of "dissatisfaction" and "impairment of operations" in another forum and is nothing more than a disagreement with the Board's exercise of the discretion vested in the Board by the Legislature. As the first two prongs of the Board's three part test for seeking judicial review are not met, it is not relevant whether the issues presented in this case are likely to arise frequently. (State of California (Museum of Science and Industry) (1996) PERB Order No. JR-17.) As the Board declines to seek judicial review, it is not necessary to rule on the District's request for a stay.

ORDER

It is hereby ORDERED that the request for judicial review of San Diego Community College District (2001) PERB Decision No. 1445-E is DENIED.

Members Amador and Whitehead joined in this Decision.